INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	2
Statutes and regulations involved	2
Statement	6
Argument	7
Conclusion	23

CITATIONS

Cases:

Alexandrotos, In re, D. C. Md., February 25, 1949	22
Angelopoulis, In re, D. C. Md., February 25, 1949	22
Bonham v. *Bouiss*, 161 F. 2d 678	14
Chin Yow v. *United States*, 208 U. S. 8	9
Chinese Exclusion Case, The, 130 U. S. 581	8
Costanzo v. *Tillinghast*, 287 U. S. 341	17
Fong Yue Ting v. *United States*, 149 U. S. 698	8
Frangos, In re, D.C.S.D. Ga., January 31, 1949	22
Hirabayashi v. *United States*, 320 U. S. 81	12
Japanese Immigrant Case, The, 189 U. S. 86	10
Kaminer v. *Clark*, decided March 7, 1949	10, 16
Kaplan v. *Tod*, 267 U. S. 228	8, 23
Korematsu v. *United States*, 323 U. S. 214	12
Low Wah Suey v. *Backus*, 225 U. S. 460	8
Ludecke v. *Watkins*, 335 U. S. 160	11, 12, 13
Ng Fung Ho v. *White*, 259 U. S. 276	10
Nishimura Ekin v. *United States*, 142 U. S. 651	10
Quon Quon Poy v. *Johnson*, 273 U. S. 352	8
Rosen v. *United States*, 245 U. S. 467	17
Turner v. *Williams*, 194 U. S. 279	8
United States v. *Ju Toy*, 198 U. S. 253	8
United States v. *Peter You Lo Chen*, 170 F. 2d 307	14
Visic v. *Dever*, D. C. Fla., December 7, 1948	21

Statutes, Proclamation and Regulations Involved:

Act of July 25, 1947, 61 Stat. 449	11
Anarchist Act of October 16, 1918, 8 U.S.C. 137, Sec. 1, as amended by Public Law 552, 80th Cong., 2d Sess.	20
Immigration Act of 1917, 8 U.S.C. 153, Sec. 16	9
Nationality Act of 1940:	
Sec. 301 (8 U.S.C. 701)	22
Sec. 312 (8 U.S.C. 712)	22, 23
Passport Act of May 22, 1918, as amended by the Act of June 21, 1941, 22 U.S.C. 223	2, 3, 19

Page

War Brides Act of December 28, 1945, 59 Stat. 659, 8 U.S.C. 232 ..... 2, 5, 14, 15
Presidential Proclamation No. 2523 of November 14, 1941 ..... 2, 3, 16, 19
Sec. 3 3
Sec. 8 4
Regulations issued under Presidential Proclamation No. 2523:
8 C.F.R. 175 4
8 C.F.R. 175.53 ..... 2, 4, 18, 20-21
8 C.F.R. 175.57 ..... 2, 4, 5, 6
8 C.F.R. 175.57(b) 5, 11

Miscellaneous:

91 Cong. Rec. 11921 14
91 Cong. Rec. 12528 14
91 Cong. Rec. 12529 14
H. Rep. 1320, 79th Cong., 1st sess. 14
S. Rep. 860, 79th Cong., 1st sess. 14

In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 733

UNITED STATES OF AMERICA EX REL. ELLEN KNAUFF, PETITIONER

v.

W. FRANK WATKINS, DISTRICT DIRECTOR OF IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Appeals has not yet been reported. The opinions of the District Court upon the original hearing (R. 28-35) and upon reargument (R. 54) have not been reported.

JURISDICTION

The judgment of the Court of Appeals was entered March 11, 1949. The petition for a writ of

certiorari was filed April 18, 1949. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

QUESTIONS PRESENTED

1. Whether the procedure under which the Attorney General directed that petitioner, an alien seeking to enter the United States, be excluded without a hearing was valid.

2. Whether such authority was exercised by the Attorney General in conformity with statutory authorization.

3. Whether the so-called War Brides Act conferred upon petitioner a right of entry into the United States which transcended prohibitions and restrictions generally applicable to aliens seeking admission.

4. Whether petitioner's purpose to apply for naturalization affords her any basis for relief from the order excluding her from admission into the United States.

STATUTES AND REGULATIONS INVOLVED

The text of the pertinent statutes and regulations are set forth in petitioner's brief. Most relevant are the Passport Act of May 22, 1918, as amended by the Act of June 21, 1941, 22 U. S. C. 223 (Pet. 33); Presidential Proclamation No. 2523 of November 14, 1941 (Pet. 40-45); regulations issued under this proclamation, 8 C. F. R. 175.53 and 8 C. F. R. 175.57 (Pet. 47-52); the War Brides Act of

December 28, 1945, 59 Stat. 659, 8 U. S. C. 232 (Pet. 34-35).

Briefly stated, the following pattern has been established by those legislative and administrative pronouncements. The Passport Act, as amended in 1941, specifies that it is to be effective when the United States is at war, or during the proclaimed national emergency, or, as to aliens, whenever a state of war exists between two or more states. Under such conditions the President is empowered to find and make public proclamation that "restrictions and prohibitions in addition to those" otherwise provided be imposed upon entry into the United States. Upon the making of such a proclamation, it is unlawful for any alien to enter the United States "except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President shall prescribe."

Under authority of that statute, the President on November 14, 1941, issued Proclamation No. 2523, reciting the then existent national emergency and state of war between two or more states and declaring "that the interests of the United States require that restrictions and prohibitions, in addition to those otherwise provided by law, shall be imposed" upon entry into the United States. In that proclamation he announced various rules, regulations, and orders restricting entries into the United States. Under Section 3 no alien is permitted to enter the United States unless he is in possession

of a valid unexpired permit to enter issued by the Secretary of State, or is exempted from obtaining such a permit to enter. In addition, the proclamation commands that:

> No alien shall be permitted to enter the United States if it appears to the satisfaction of the Secretary of State that such entry would be prejudicial to the interests of the United States as provided in the rules and regulations hereinbefore authorized to be prescribed by the Secretary of State, with the concurrence of the Attorney General.

Section 8 of the proclamation enjoins "all departments and agencies of the Government to cooperate with the Secretary of State in the execution of his authority under this proclamation and any subsequent proclamation, rule, regulation, or order promulgated in pursuance hereof." Presidential Proclamation No. 2523 has never been revoked and is still in effect.

Discharging their responsibilities under the statute and proclamation, the Secretary of State and the Attorney General jointly issued regulations, which now appear in 8 C. F. R., Part 175. 8 C. F. R. 175.53 defines the categories of aliens whose entry shall be deemed prejudicial to the interests of the United States. 8 C. F. R. 175.57 permits temporary exclusion at a port of entry in the case of an alien applicant for admission who appears to be

excludable under 8 C. F. R. 175.53. Section 175.57 also provides:

> Any alien so temporarily excluded by an official of the Department of Justice shall not be admitted and shall be excluded and deported unless the Attorney General, after consultation with the Secretary of State, is satisfied that the admission of the alien would not be prejudicial to the interests of the United States.

Subsection (b) of Section 175.57 provides:

> * * * In any special case the alien may be denied a hearing before a board of special inquiry and an appeal from the decision of that board if the Attorney General determines that he is excludable under one of the categories set forth in § 175.53 on the basis of information of a confidential nature, the disclosure of which would be prejudicial to the public interest.

The War Brides Act of December 28, 1945, grants certain exemptions from the physical, mental, and documentary requirements of the immigration laws to the alien spouses and children of American citizens who served honorably in the armed forces of the United States during the Second World War. It stipulates that such aliens "shall, *if otherwise admissible under the immigration laws,* and if application for admission is made within three years of the effective date of this act, be admitted to the United States." Under its express limitations, the

War Brides Act has expired and has not been extended. However, petitioner applied for admission to the United States before the statute's expiration date and thus may claim any benefits to which she may be entitled under that statute.

STATEMENT

Petitioner, Ellen Knauff, is an alien who was born in Germany and now claims to be stateless. On February 28, 1948, she married Kurt W. Knauff, a naturalized citizen of the United States who had served in the armed forces of the United States during World War II and had been honorably discharged on January 17, 1946. The marriage took place in Germany, where the husband was and still is a civilian employee of the United States Army.

On August 14, 1948, petitioner sought to enter this country as a war bride under the terms of the Act of December 28, 1945, for the purpose of applying for naturalization. Upon examination by an immigrant inspector she was temporarily excluded pursuant to 8 C.F.R. 175.57, *supra,* on the ground that her admission to the United States was or might be prejudicial to the interests of the United States. On October 6, 1948, the Attorney General ordered, on the basis of confidential information and evidence, that petitioner be denied a hearing before a Board of Special Inquiry, that the temporary exclusion order be made permanent, and that she be deported from the United States as an

alien whose entry into this country would be prejudicial to the interests of the United States.

Petitioner then brought habeas corpus proceedings in the District Court for the Southern District of New York challenging the legality of her detention. After a hearing, the court dismissed the writ (R. 28-35). A motion for reargument was entertained but the court adhered to its original decision (R. 54). On appeal to the Court of Appeals for the Second Circuit, the order of the District Court was affirmed.

ARGUMENT

1. Petitioner challenges the constitutionality of the procedure under which she was barred from entry into the United States. She contends that the War Brides Act conferred upon her and her husband [1] some vaguely defined status which could not constitutionally be denied to them. She complains that she was improperly denied a hearing. And she denounces the regulation as vague and ambiguous, and the statute as improperly delegating legislative authority to executive officers.

It is well established that Congress has plenary power to regulate the admission of aliens into the United States. The existence of such unqualified

[1] It cannot be perceived what standing petitioner's husband can claim in this proceeding. His wife is under detention following rejection of her application for admission. It is she who complains that her restraint is illegal, and the only question to be adjudicated is the propriety of that restraint. Any claim to relief must rest upon substantive or procedural rights available to her.

power is inherent in national sovereignty. *The Chinese Exclusion Case,* 130 U. S. 581; *Turner* v. *Williams,* 194 U. S. 279. In executing this mandate, Congress may enact laws prescribing the conditions under which an alien may enter the United States and may commit the administration and enforcement of such laws to the executive officers of the Government. *Fong Yue Ting* v. *United States,* 149 U. S. 698; *Low Wah Suey* v. *Backus,* 225 U. S. 460.

Petitioner is an alien seeking to enter the United States. She has gained no foothold in the United States. In contemplation of law she is regarded as stopped at the boundary line and kept there while her right to enter is being adjudicated. *United States* v. *Ju Toy,* 198 U. S. 253, 263; *Kaplan* v. *Tod,* 267 U. S. 228. A person so situated is not entitled to claim the full protections of the Constitution, even if he claims to be an American citizen, which petitioner does not. *United States* v. *Ju Toy, supra; Quon Quon Poy* v. *Johnson,* 273 U. S. 352, 357.

While petitioner apparently is aware of these well settled principles, she contends nevertheless that there is no authority to deny her a hearing. It is true that it has been said in other contexts that an alien seeking to enter the United States is entitled to a fair hearing. This concept probably

originated in *Chin Yow* v. *United States*, 208 U. S. 8, 12, where this Court said:

> The decision of the Department is final, but that is on the presupposition that the decision was after a hearing in good faith, however summary in form.

As a general proposition, such observations are indisputably true. In the ordinary case, the arriving alien whose right to enter is questioned, is given a full hearing before a Board of Special Inquiry, as required by Section 16 of the Immigration Act of 1917, 8 U.S.C. 153.

But there is nothing in the Constitution which precludes Congress from authorizing the exclusion of an arriving alien without a hearing when the granting of such a hearing would conflict with the national interest during time of war or other emergency. The decisions which have affirmed the right to a hearing in exclusion cases have been rendered under statutes or administrative regulations which provide for a hearing. In such circumstances, the courts intercede only to assure compliance with the requirements of the applicable statute or regulations. But no case, so far as we are aware, has ever held that an alien who is denied a formal hearing and excluded pursuant to Congressional authorization has any redress in the

courts. As this Court stated in *Nishimura Ekiu* v. *United States*, 142 U. S. 651, 660:

> It is not within the province of the judiciary to order that foreigners who have never been naturalized, nor acquired any domicile or residence within the United States, nor even been admitted into the country pursuant to law, shall be permitted to enter, in opposition to the constitutional and lawful measures of the legislative and executive branches of the national government. *As to such persons, the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law.* (Italics supplied.)

Petitioner has overlooked the distinction between the deportation of aliens residing within the United States and the exclusion of those who have never resided here and who seek to enter. Alien residents are entitled to the protections of the due process requirement of the Constitution. *Ng Fung Ho* v. *White*, 259 U. S. 276; *The Japanese Immigrant Case*, 189 U. S. 86. Non-resident aliens who seek to enter cannot claim similar protections.

Aliens seeking admission must accept the procedures governing their admission or exclusion which Congress and executive officials, pursuant to statutory authority, have prescribed. That principle was found applicable by the only other court which until now has passed directly upon the constitutionality of the procedures challenged in the instant case. In *Kaminer* v. *Clark*, decided March 7, 1949 (unreported), a three judge District Court

for the District of Columbia held in a brief *per curiam* opinion:

> Without expressing any opinion as to whether the plaintiff has pursued a proper remedy, the Court is of the opinion that an alien seeking entry into the United States has no standing to attack the constitutionality of an act of Congress and that in any event the act in question is constitutional.

The denial of a hearing to an alien seeking admission is, indeed, an extraordinary measure, and it is invoked only in exceptional cases where the disclosure of the basis of exclusion would be prejudicial to the public interest (see 8 C.F.R. 175.57 (b), *supra*). This authority stems from the Passport Act (Pet. 33) and is limited in its application to a time of war or national emergency. The court below held that the existence of the proclaimed national emergency was in itself sufficient to justify the exercise of such authority. It is fully supported as well by the existence of a state of war. The United States still is at war. *Ludecke* v. *Watkins*, 335 U. S. 160. While actual hostilities ended over three years ago, there has been no treaty of peace with the principal enemy states, Germany and Japan, and there has been no legislative or executive declaration that the war is at an end.[2]

---

[2] The Act of July 25, 1947, 61 Stat. 449, rescinded war powers granted under various enumerated statutes, and declared the war at an end for the purposes of those statutes. This enumeration and rescission did not include the war powers conferred under the Passport Act.

Many cases have described the broad sweep of the war powers. E.g., *Hirabayashi* v. *United States,* 320 U. S. 81; *Korematsu* v. *United States,* 323 U. S. 214. Of particular significance here is the recent decision of this Court in *Ludecke* v. *Watkins, supra,* which sustained the power under the Alien Enemy Act to remove alien enemies during time of war. In many respects the procedure under that act closely parallels that involved here. There, too, the statute directs the President to take measures to safeguard national security during time of war. There, too, the President has delegated his authority to the Attorney General and has authorized him to deport alien enemies whom he may deem "to be dangerous to the public peace and safety of the United States." There, too, the Attorney General acts without the formal hearing ordinarily provided to satisfy due process requirements.

Petitioner attempts to distinguish the *Ludecke* case by asserting that "Ludecke was not a war bride." We show below that the War Brides Act, which alone gives such persons special advantages, did not override the general provisions of the Passport Act. Actually the authority sustained in the *Ludecke* case went beyond that exercised in the instant case, for the summary deportation procedure involved there, including the denial of formal hearing, was directed against aliens already residing in the United States. Manifestly, this Court's conclusions would be applicable, *a fortiori,* with

respect to an alien non-resident who is stopped at the border while seeking entry.

The *Ludecke* decision and the many cases cited in the Court's opinion in that case completely refute the petitioner's challenge to the validity of the procedure followed in the instant case. There this Court sustained, under comparable conditions of wartime stringency, the denial of a hearing, the delegation of authority to an executive officer of cabinet rank, and the grant of wide latitude to such officer. Manifestly, wartime conditions entailing national security warrant the delegation of wide discretion to executive officials whose responsibility it is to defend the national interest. Manifestly, too, the denial of a hearing under such conditions may become necessary in advancing the national interest and security and in safeguarding the identity of confidential informants, in the United States and overseas.

2. Petitioner claims that the War Brides Act has invested her with an absolute right to enter the United States. It is submitted that this contention is predicated on a number of misconceptions.

Even the most superficial reading of the War Brides Act demonstrates that it was not the Congressional purpose to exempt the alien brides of servicemen from every requirement of the immigration laws. The statute relieves such brides only from the physical, mental, documentary and quota requirements of the immigration laws and insists that their entry into the United States will be per-

mitted only if they are "otherwise admissible under the immigration laws." The legislative history clearly indicates that Congress desired merely to facilitate the admission of alien brides whom our soldiers had married while serving overseas during World War II, and not to exempt such aliens from all the restrictions of the immigration laws. H. Rep. No. 1320, 79th Cong., 1st Sess.; S. Rep. No. 860, 79th Cong., 1st sess.; 91 Cong. Rec. 11921, 12528, 12529.

A liberal construction of the War Brides Act does not justify complete disregard of the Congressional mandate. *United States* v. *Peter You Lo Chen,* 170 F. 2d 307 (C.A. 1). An alien war bride who does not fulfill immigration requirements not specifically excepted in the statute cannot be permitted to enter the United States. *Bonham* v. *Bouiss,* 161 F. 2d 678 (C.A. 9).

Petitioner's argument that the Passport Act, as amended in 1941, is not an "immigration law" within the contemplation of the War Brides statute represents an attempt to exalt form at the expense of substance. Citation of authority hardly is necessary to illuminate the legislative design in referring to "immigration laws." What the War Brides Act contemplated was the retention of restrictions in other statutes, other than those specifically excepted, regulating the entry of aliens into the United States. By its title, its terms, and its objectives, the Passport Act obviously is such a statute.

Petitioner urges that under the terms of the War

Brides Act the war must be regarded as having ended with the President's proclamation of the termination of hostilities on December 31, 1946, and that the Passport Act's inhibitions consequently are no longer applicable. This is a *non-sequitur*. Under no rational construction can the limitation set forth in Section 5 of the War Brides Act be enlarged so as to extinguish war powers exercised under other statutes. The definition of "the Second World War" in Section 5 of the War Brides Act, 8 U.S.C. 236, relates to the provision in Section 1 of the same statute, which limits the benefits of that act to the relatives of veterans who served during "the Second World War" as so defined. Moreover, as the court below has pointed out, the Passport Act directives are supported additionally by the state of emergency proclaimed by the President on May 27, 1941, which has never been terminated.

If petitioner's contentions based on the War Brides Act are sound then there would have been nothing in our laws to prevent an alien spy or saboteur from marrying one of our fifteen million veterans of World War II and then demanding admission to the United States. We cannot conceive that such a conclusion is warranted by the language of the statute or by the Congressional design.

It is to be noted that there have been only two cases, including the instant one, in which the security devices of the Passport Act have been invoked

against an applicant for admission into the United States under the War Brides Act.

3. Petitioner next urges that the Attorney General's processes in the instant case did not conform with statutory mandates. Even assuming that a non-resident alien seeking entry into the United States has any standing to challenge statutes and regulations barring his admission,[3] we believe that this contention likewise is unsupportable.

The procedure set forth in the regulations is both reasonable and appropriate. In cases involving security considerations the final order of exclusion may be made only by the Attorney General or by the Secretary of State, officers of Cabinet rank. When security requirements dictate the need for withholding the names of confidential informants, only the Attorney General can direct, in an exceptional case, that a formal hearing be dispensed with. The Presidential Proclamation, it is true, conferred primary responsibility upon the Secretary of State, authorized him to define the procedure in rules and regulations to be promulgated with the concurrence of the Attorney General, and directed all Government departments and agencies to aid the Secretary of State in precluding the entry of aliens whose admission was deemed prejudicial to the interests of the United States. In implementing his responsibilities under the statute and Presidential Proclamation, the Secretary of State

---

[3] *Kaminer* v. *Clark*, *supra*.

promulgated regulations, with the concurrence of the Attorney General, defining the classes of aliens whose entry is deemed prejudicial to the interests of the United States and authorizing the Attorney General under certain contingencies to enter a final order of exclusion in such cases and to deny a formal hearing in exceptional cases where confidential information was involved. Since the Attorney General ordinarily is charged with statutory responsibility for administering the immigration laws, this procedure seems both reasonable and expedient. Moreover, its execution is entrusted to the officials of the highest rank.

Heavy reliance must be placed on the regulations formulated by the executive officers charged with execution of the statute and acting in pursuance of expressed statutory authorization. *Costanzo* v. *Tillinghast*, 287 U. S. 341. Their reading of the statutory mandate should not be upset unless clearly erroneous. *Rosen* v. *United States*, 245 U. S. 467, 473. As the court below has emphasized, the burden of establishing any alleged irregularity of official regulations is upon one who makes the challenge. Petitioner has failed to sustain that burden.

The terms of the regulation do not, as petitioner contends, require consultation by the Attorney General with the Secretary of State in every case. Such consultation is required only if the Attorney General desires to admit an alien whose security status is questionable. Where the Attorney General con-

cludes that the alien's admission may be prejudicial to the interests of the United States, as prescribed in the regulation, he is authorized to deny an application for admission without consulting the Secretary of State.

Petitioner has gone to considerable lengths in attempting to establish that she really is loyal to the United States and that the charges against her are false. She has submitted affidavits, letters, and even efficiency ratings as a Government employee. It is submitted that this is a matter for determination solely by the Attorney General in the execution of his responsibilities under the statute and the regulations. Any evidence regarding petitioner's loyalty should have been submitted, as much of it was, to the Attorney General. Upon the evidence before him, which included confidential information, the Attorney General concluded that petitioner's entry would be prejudicial to the interests of the United States and directed that she be excluded and deported. It is submitted that such a finding is not reviewable in the courts.

Petitioner also attempts to analyze each ground for exclusion set forth in 8 C. F. R. 175.53 and to urge that she is not encompassed within the categories listed in that regulation. Here too it must be urged that only the Attorney General can find, on the basis of evidence satisfactory to him, that petitioner falls within the proscription of the

statute and the regulations and that his findings are not subject to judicial review.

Petitioner contends further that the Passport Act and the Presidential Proclamation do not authorize any modification of the general requirements of the immigration laws and particularly do not justify dispensation with the Board of Special Inquiry hearing ordinarily prescribed in the case of an alien immigrant whose right to enter is questioned. This contention disregards the language and purpose of the Passport Act, which obviously was designed to sanction immigration safeguards, during time of war or national emergency, beyond those ordinarily prescribed. The Passport Act specifies that under such conditions the President may "find that the interests of the United States require that restrictions and prohibitions in addition to those provided otherwise" shall be imposed upon "entry into the United States." The Presidential Proclamation also recites that it is intended "to impose restrictions and prohibitions in addition to those otherwise provided by law upon the departures of persons from and their entry into the United States." The proclamation further authorizes the Secretary of State to prohibit the entry of persons whose admission would be prejudicial to the interests of the United States and to promulgate procedures in reasonable rules and regulations issued with the concurrence of the Attorney General. The "restrictions and prohibitions * * *

upon * * * entry into the United States" mentioned in the statute and the proclamation manifestly are designed to supplement and modify the normal processes of the immigration laws during time of war and national emergency. During such a period, the Passport Act, the Presidential Proclamation and the regulations forge a pattern of exclusion which extends beyond the formulas normally applied under the immigration laws. With evident purpose, the Congress did not limit the President to naming additional classes or grounds for exclusion but included additional "restrictions and prohibitions" upon "the entry" of aliens, which manifestly refers to procedures as well.

The application of this concept also answers petitioner's contentions in relation to Public Law 552, of May 25, 1948, which amended Section 1 of the Anarchist Act of October 16, 1918, 8 U. S. C. 137, by directing the exclusion of "aliens who the Attorney General knows or has reason to believe seek to enter the United States for the purpose of engaging in activities which will endanger the public safety of the United States." That amendment was adopted as a permanent addition to our immigrations laws, effective during time of war and peace. The procedures invoked under the Passport Act, on the other hand, may be invoked only during time of war or national emergency and are being utilized only during such an era. Moreover, it should be pointed out that 8 C. F. R. 175.53 specifically

characterizes as prejudicial to the interests of the United States:

> (a) Any alien who belongs to one of the classes specified in the act of October 16, 1918, as amended.

Consequently an alien in that category would be subject to the procedures described in 8 C. F. R. 175.57.

Petitioner complains that she was not informed of the basis of the decision of the Attorney General. It is evident that petitioner has reference to the evidence upon which her exclusion was directed. Her exhibits (R. 24-25) show that she and her representatives have been made aware of the cause of her exclusion; by reason of such revelation at her request she now complains that the Attorney General waived the confidential nature of the information considered by him and that the seal of segrecy under which the evidence was received has been removed. But the letters to her representative merely set forth the factual conclusions reached by the Attorney General. They did not reveal the confidential evidence submitted for his consideration. Such evidence could not be disclosed in the administrative process. It likewise must be withheld in the court proceedings.

Finally, petitioner seeks support from an unreported district court decision, *Visic* v. *Dever*, in which the United States District Court in Florida held that only the Secretary of State and not the

Attorney General could issue an order of exclusion under 8 C. F. R. 175.57. This is the only court decision in which such a position has been taken, and the decision is being appealed to the United States Court of Appeals for the Fifth Circuit. The few other unreported cases [4] which have considered the same point, including the holding of the lower courts in the instant case, have supported the Attorney General's authority. It is submitted that on this point there is no such diversity of adjudications as would impel the granting of certiorari.

4. Petitioner's final contention is that she should be granted relief in this proceeding because she desires to apply for naturalization under Section 312 of the Nationality Act of 1940, 8 U. S. C. 712. We do not perceive how this assertion has any relevance in the instant proceeding. Petitioner has been barred from entering the United States under the immigration laws and the only issue before this Court is the legality of the administrative order excluding her. Her qualifications as an applicant for naturalization may be considered only by a naturalization court upon a petition regularly filed. Section 301, Nationality Act of 1940, 8 U. S. C. 701.

Petitioner is mistaken in her argument that she now is legally within the United States and thus may apply for naturalization. Being confined in

---

[4] *In re Frangos*, D.C.S.D. Ga., January 31, 1949; *In re Angelopoulis*, D.C. Md., February 25, 1949; *In re Alexandrotos*, D.C. Md., February 25, 1949.

an immigration station following rejection of her application for admission, she is in legal contemplation outside of the United States for the purposes of the naturalization laws. *Kaplan* v. *Tod*, 267 U. S. 228. Moreover, petitioner concedes that the administrative interpretation of the statute, supported by an opinion of Attorney General Jackson (set forth in Pet. 57-59), requires lawful admission for permanent residence as a prerequisite to naturalization under Section 312 of the Nationality Act of 1940. That administrative interpretation has been consistent and unchallenged and certainly is entitled to the greatest consideration. In any event, we submit that the petitioner's eligibility or ineligibility for naturalization has no proper place in the consideration of these proceedings.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

PHILIP B. PERLMAN,
Solicitor General.
ALEXANDER M. CAMPBELL,
Assistant Attorney General.
ROBERT S. ERDAHL,
Attorney.
L. PAUL WININGS,
General Counsel, Immigration and Naturalization Service.
CHARLES GORDON,
Attorney.

APRIL 1949.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1949 635557 887